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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MARK BURDETT,

Plaintiff,

vs.

San Francisco Police Officers RAMON  
REYNOSO (#454), MARK SHEA  
(#2092), and SFPD DOES 1 through 10,  
inclusive; SAN FRANCISCO SHERIFF'S  
DEPARTMENT DOES 11 through 15,  
inclusive, THE CITY AND COUNTY OF  
SAN FRANCISCO, and City and County  
DOES 16 through 20, inclusive,

Defendant.

Case No. C06-0720 JCS

**STIPULATION AND ~~PROPOSED~~  
ORDER RE TRIAL VIDEO AND  
CONDUCT OF OTHERS**

Date Action Filed: February 1, 2006  
Trial Date: December 3, 2007

Stipulation re Video and Conduct of Others

Burdett v. Reynoso, et al., USDC No. C07-0720 JCS

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Pursuant to the Court's Final Pretrial Order, the parties, through their undersigned counsel, have met and conferred, and now reached agreement, concerning which segments of video, and which F.R.E. 404(b) evidence may be introduced at trial. The parties, through counsel, hereby stipulate as follows:

1. Either or both parties may play each of the following video clips, and only the following video clips, in their prima facie cases at trial. The parties further agree that any additional clips that will be used for impeachment or rebuttal purposes will be identified for the other party prior to being shown to the jury:

(a) Plaintiff Burdett's Video (Ex. 40): Portion which begins with the scanning of the "Jones" Street sign and continuing through with plaintiff's movement east along the north sidewalk of Market at Jones, then across Market Street to videotape the arrest of Shepardson, until the video cuts out during plaintiff's own arrest;

(b) Officer Lewis Video (Ex. 42): Everything beginning with the video of the incident until the end of that video;

(d) Officer Mammone Video (Ex. 43): The brief clip depicting plaintiff standing on the sidewalk along Market Street, filming, among a group of people; and

(d) Officer Mooney Video (Ex. 44): Everything between when Officer Mooney says "It's now about 8 minutes after the hour," including marchers coming down Jones Street, through the incident, until the end of that video, with the citizen interview redacted.

2. The parties agree either or both parties may play slow motion segments, or show freeze frames on the video screen, from any of the video segments listed above, provided that the clip which includes such slow motion or freeze frames has been played at least once through at regular speed.

3. The parties may introduce the following, and only the following, evidence of other bad acts:

(a) Conduct of Noah Shepardson-Brewster, including his spitting and yelling at police officers, refusal to obey police commands to get on the sidewalk, and his conduct in fleeing from and forcibly resisting arrest;

(b) Conduct of Brian Wickenheiser in interfering with the arrest of Noah Shepardson-Brewster, including his forcible removal of Shepardson-Brewster from police custody, and his resistance to arrest; and

(c) Conduct of Micah Frazier in disobeying police officers to stay out of the street, in interfering with the arrest of Noah Shepardson-Brewster and in resisting arrest.

(d) Conduct of unknown protestors (not Mr. Burdett) in allegedly interfering with the arrest of Noah Shepardson-Brewster.

(e) The video + images described in Ps 1+2, but not other video.

3. The parties further stipulate and agree that either party may elicit testimony related to the following: "On March 20, 2004, after the permitted antiwar march culminated in the Civic Center of San Francisco, on United Nations plaza in front of City Hall, a group of marchers left the Civic Center on an unpermitted march through. Just prior to the incident which this case is based on, that unpermitted march was coming down Jones Street, toward Market Street."

4. The parties will be allowed to elicit testimony concerning (a) the fact of this breakaway march, (b) the route of the breakaway march down to Fifth & Market and back to Jones & Market, (c) the conduct of the marchers as consistent with the video and 404(b) proffers listed above, and (d) the significance of the march as it bore on the actions which police or plaintiff took, but the parties will not be allowed to introduce any video, testimony, or other evidence regarding conduct by police or others, apart from what the parties have agreed to above, and will not elicit testimony about the conduct of police or protestors at the arrest and encirclement at 5th & Market Streets.

5. If and when the Court approves this agreement, it will extinguish and supersede all other proffers and requests by the parties concerning what video evidence, or evidence of the conduct of others, may be introduced at trial.

1 Dated: November 30, 2007

2 DENNIS J. HERRERA  
3 City Attorney  
4 JOANNE HOEPER  
5 Chief Trial Deputy  
6 RONALD P. FLYNN  
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10 RONALD P. FLYNN

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14 BROWN, STEPHEN SMALLEY  
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16 DAVID LAZAR, JOHN DELFIN

17 Dated: November 30, 2007

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20 Law Office of Dennis Cunningham

21 By: B. Rosenfeld  
22 BEN ROSENFELD  
23 Attorneys for Plaintiff MARK BURDETT

24 IT IS SO ORDERED

25 Date: 11/30/07

26   
27 HON. JOSEPH C. SPERO  
28 UNITED STATES DISTRICT MAGISTRATE JUDGE